

UNITED STATES PATENT AND TRADEMARK OFFICE

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APR 2 2007

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte ALAN B. CAYTON, J. BRANDT HAMBY  
and KEVIN J. LEONARD

Application No. 09/641,021

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on January 3, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

The Examiner's Answer mailed on July 21, 2006, stated under the Evidence Relied Upon section, page 2 that "No evidence is relied upon by the examiner in the rejection of the claims under appeal." A review of the file reveals that prior art was applied to the

Application No. 09/641,021

Rejections on appeal. See the Grounds of rejection on pages 2-3 of the Examiner's Answer. The Manual of Patent Examining Procedure, (MPEP), in §1207.02 states:

(8) *Evidence Relied Upon.* A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

Before further review, the examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of references mentioned in the statement of rejections. See the Manual of Patent Examining Procedure, (MPEP) § 1207.02. Appropriate correction is required.

Accordingly, it is **ORDERED** that the application is returned to the Examiner to:

- 1) issue and mail a PTOL-90 having the missing references listed under the Evidence Relied Upon section, heading (8) of the Examiner's Answer; and
- 2) for such further action as may be appropriate.

Application No. 09/641,021

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By: Patr. Nlr  
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